In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1047

KEITH ANTHONY GRANT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the evidence was insufficient to support a finding that he was in possession of a firearm. He also contends that the district court improperly examined government witnesses.

Following a jury-waived trial in the United States District Court for the Middle District of North Carolina, petitioner was convicted of illegal possession of an unregistered firearm, in violation of 26 U.S.C. 5861(d) and 5871. He was sentenced to 18 months' imprisonment. The court of appeals affirmed (Pet. App.).

On October 31, 1974, a police officer executed a state search warrant at petitioner's home in Greensboro, North Carolina, and seized an unregistered sawed-off shotgun (Tr. 3, 11-12, 25-27). The officer found the shotgun on top of the headboard of a bed in the rear bedroom, where he

also found a gasoline bill addressed to petitioner and a check and a savings book that bore petitioner's name. A cash box containing $9,000 was also found in a closet of the bedroom (Tr. 12-13).

Petitioner was not home at the time of the search. Cecil Williamson let the officer into the house and said that he was petitioner's roommate (Tr. 4, 9-10). The officer arrested Williamson for possession of marihuana after he found the substance in the front bedroom (Tr. 10-11). Several days after the search and seizure, petitioner appeared at the police station with his lawyer and claimed everything that had been confiscated, including the cash, cash box, keys, check, and savings book (Tr. 23).

1. The court of appeals correctly concluded that the evidence was sufficient for the trier of fact to determine that petitioner had constructive possession of the sawed-off shotgun. The firearm was found in a bedroom in which there were papers with petitioner's name as well as money and other items that petitioner said belonged to him. As in *United States* v. *Craven*, 478 F. 2d 1329 (C.A. 6), certiorari denied, 414 U.S. 866, upon which petitioner places principal reliance, there was evidence in addition to occupancy of the house which justified the inference that petitioner possessed the firearm. It was not necessary for the government to disprove Williamson's ownership of the firearm (Pet. 10-11), because a finding of guilt does not require that every hypothesis consistent with innocence be excluded. *Holland* v. *United States*, 348 U.S. 121.

2. Petitioner's additional claim that the court was an advocate for the prosecution (Pet. 13-16) was not raised in the court of appeals and should not be considered by this Court. In any event, the contention is groundless. All four witnesses who testified appeared for the government, and

the questions asked by the court were merely designed to clarify the evidence and elicit the facts (see Tr. 5-6, 8-11, 15-16, 28). As the trier of fact in this bench trial, the court's discretion to ask pertinent questions was especially broad.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1976.